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ABSTRACT

This handbook is intended to inform parents of children with disabilities with information about parent rights, the rights of the child, and the responsibilities of the local education agency (LEA) toward meeting the special needs of the child. Individual sections address the following topics: special education laws and children with disabilities, parents' rights, parental consent, referrals for special education services, participation in meetings, prior written notice, evaluation procedures, independent educational evaluation, eligibility determination, the individualized education program, related services, placement, reevaluation, discipline procedures, interim alternative education settings, private school placement, opportunity to examine records, resolving disagreements, mediation, formal written complaints, due process hearings, placements during due process, surrogate parents, transfer of parental rights, and resources for parents. (DB)

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Handbook on

Parents' Rights

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Public Schools of North Carolina
State Board of Education
Department of Public Instruction
Exceptional Children Division

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March 2000

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Handbook on Parents' Rights
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SPECIAL EDUCATION LAWS GOVERNING THE RIGHTS OF PARENTS AND CHILDREN WITH DISABILITIES

North Carolina has educated children with disabilities in its public schools since 1949-50, but it was not until 1977 that the General Assembly passed a law which required the state's public schools to provide special education for all children with disabilities. This law is Article 9, Special Education, of the North Carolina General Statutes, Section 115C-106 to 115C-150. It models the federal law, which is entitled "Individuals With Disabilities Education Act" (IDEA). In 1997, Congress reauthorized IDEA and regulations for implementing it were released to states in June 1999. These laws define special education as "specially designed instruction, at no cost to the parent, to meet the unique needs of the exceptional child and may include instruction provided in the classroom, in the home, in the hospital, and in residential facilities and other settings."

Children with disabilities include children who are autistic, deaf-blind, behaviorally-emotionally disabled, hearing impaired, mentally disabled, multihandicapped, other health impaired, orthopedically impaired, pregnant, preschool delayed/atypical, specific learning disabled, speech-language impaired, traumatic brain injured, and visually impaired.

These laws require that all eligible children with disabilities, age 3-20, be provided a free appropriate public education. Free appropriate public education, sometimes called FAPE, means that special education and related services based on the unique needs of the child will be provided:

- at public expense without cost to the parents;
- according to standards of Public Schools of North Carolina, Department of Public Instruction;
- for children in preschool, elementary, secondary or public charter school in the state, and
- according to an individualized education program (IEP) or written education program (WEP).

The numbers listed after each heading in this book refer to the section in the IDEA regulations where the information is found.

PURPOSE OF THIS HANDBOOK

As the parent of a child who is suspected to need or is identified as needing special education, you have certain rights which are guaranteed by state and federal laws. Those laws require parents to be fully informed of all available procedures relating to the identification, evaluation, placement, delivery of services, educational records, and resolving complaints.

The purpose of this handbook is to provide you with information about your rights, the rights of your child, and the responsibilities of the local education agency (LEA) toward meeting the special needs of your child. The term LEA means any school program conducted by a public agency and approved by the North Carolina Department of Public Instruction. In North Carolina, this includes county, city, and charter schools. Charter schools are public schools and must follow the same regulations and procedures as other public schools regarding students with disabilities.

This handbook must be given to you at the following times:

- when your child is first referred for evaluation;
- each time you are notified of an IEP meeting;
- when your child's reevaluation is being considered; and
- when the school receives a request for due process.

It is important that you understand the rights provided for you and your child with a disability. Our staff is available to assist you in understanding your rights and will provide a further explanation of the available procedures upon your request. If it is necessary, we will provide an interpreter or written translation to help you understand the information presented in this handbook. If you have any questions or would like additional information, please contact the special education department in your local school or school system.

School Contact _____ Telephone _____

Director, Exceptional Children Programs _____ Telephone _____

YOUR RIGHTS AS A PARENT 300.500

The North Carolina Department of Public Instruction ensures that each public school establishes, maintains, and carries out the procedural safeguards (rights) that are explained in this handbook. Several words that are used throughout this document have been defined according to the IDEA regulations.

- **Consent** means that you have been given all the information necessary to make an informed decision about the proposed activity. The information will be provided in your native language or other mode of communication. Consent also means that you understand and agree in writing to the proposed activity. Therefore, *written notice* must be part of any request for your written consent.

- **Evaluation** means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

- **Personally identifiable** means that the information includes the name of the child, the child's parent or other family member, the child's address, a personal identifier such as the child's social security or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

- **Parent**. IDEA uses the term *parent* to mean–
  - A natural or adoptive parent of a child;
  - A guardian but not the State if the child is a ward of the State;
  - A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or
  - A **surrogate** parent who has been appointed in accordance with Sec. 300.515.
  - A **foster parent** may act as a parent if the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under the Act; and has no interest that would conflict with the interests of the child.

Parental Consent 300.505

Granting consent is voluntary on your part, and may be withdrawn at any time by writing the school. If you withdraw consent, it is not retroactive. Therefore, withdrawing consent does not undo any actions that have already taken place, but withdrawing consent does keep further actions from occurring.

If you revoke your consent after your child has been placed in a special education program and the LEA feels that your child needs to remain in the program, the LEA may request a due process hearing, unless you reach some other agreement with your school. In the interim, the school must continue to provide the services specified in the IEP.

1. You must give informed consent:
   - before your child is evaluated for the first time to determine whether he/she is eligible for special education;
   - before your child's special education program first begins;
   - before your child is tested as part of a reevaluation; and
   - before your child's records are released to a person or organization that is not otherwise authorized to see them.

2. Parental consent is not required before:
   - reviewing existing data as part of an evaluation or a reevaluation;
   - administering a test or other evaluation that is administered to all children unless consent was required of parents of all children before administration of that test; or
   - implementing the IEP after the initial placement.

3. If you do not respond to a request for a reevaluation, the school system may evaluate your child if they can demonstrate that they have taken reasonable measures to obtain your consent and you failed to respond.

4. If you refuse consent for initial evaluation or a reevaluation, the school may continue to pursue those evaluations by using a due process hearing or mediation. You have the right to protest the proposed action at the hearing.
   - If the hearing officer upholds the school, the school may evaluate or initially provide special education and related services to the child without your consent.
   - Any party to the hearing has the right to appeal to the state education agency, which shall conduct an impartial review of the hearing. This decision is final unless a party decides to bring action in court.

Referrals for Special Education Services

Federal and state laws require education agencies to locate, identify, and evaluate all children with disabilities that may be in need of special education and related services, including children who are enrolled in private or parochial elementary and secondary schools, or are being home schooled.

A **referral** is a written request for an evaluation, which is given to the public school when a child is suspected of having a disability and might need special education services. When any person, including the parents, or agency thinks that a child may need special education services, that person or agency should tell school personnel in writing the reason(s) for referring the child for testing/evaluation. The referral should include the child's specific problem, current strengths, and weaknesses. If the child is enrolled in a public school, the referral should be given to the child's teacher or principal. If the child is not enrolled in a public school, the referral should be given to the superintendent of the local public schools. For preschool children with suspected disabilities, the referral may be given to the school system's person who is in charge of services for preschool children with disabilities.

A group of qualified individuals must decide whether an evaluation will be conducted. If the group decides not to evaluate your child, they must notify you in writing of their decision and the reason. If an evaluation will be conducted, you should be invited to discuss your concerns and the types of testing and other procedures that will be used to determine if your child needs special education services. If you disagree with the group's decision, you have the right to request a due process hearing.

Participation in Meetings 300.345

Parents of a child with a disability must be provided an opportunity to participate in meetings about the identification, evaluation, and educational placement of the child and the provision of FAPE.

The school has the responsibility to ensure that one or both parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including –

- notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and
- scheduling the meeting at a mutually agreed on time and place.

The notice about the meeting must indicate the purpose, time, and location of the meeting and who will be attending. If you do not come to a scheduled meeting, the meeting may be held as long as the school has a record of its efforts to involve you. If you have agreed to attend the meeting and then cancel on the day of the meeting, the school may conduct the meeting without you. If you are unable to attend the meeting where placement decisions are being made, the school can include you through individual or conference telephone calls. The school must provide an interpreter for the meeting for parents with deafness or whose native language is other than English.

A meeting does not include informal or unscheduled conversations involving school system personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public school personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

IN OTHER WORDS. . .

You *must* be invited to any meeting that is held to discuss your child's category of disability, evaluations/reevaluations and their results, the placement of your child, and his/her IEP and its contents.

Prior Written Notice 300.503

Federal and state laws require that a very specific type of **written notice** be given to the parents of a child with a disability before the school system begins or changes, or refuses to begin or change, the identification, evaluation, or placement of a child or the provision of a free appropriate public education for the child (the services provided in the IEP). The school must also provide a copy of the North Carolina Handbook on Parents' Rights upon receipt of a request for due process regarding the provision of a free appropriate public education.

1. The **prior written notice** must include:

   - a full explanation of all of the rights available to the parents under federal and state laws;
   - a description of the action proposed or refused by the school, or an explanation of why the school proposed or refused to take action;

- a description of any other options the school considered and reasons why those options were rejected;
- a description of each evaluation procedure, test, record, or report the school will use as a basis for the proposal or refusal;
- a description of any other factors which are relevant (important) to the school's proposal or refusal;
- a statement that you have protection under the procedural safeguards (rights). If the notice is not an initial referral for evaluation, a statement must tell you how you can get a copy of this handbook; and
- where you can get assistance in understanding the content of notice.

2. The notice must be written in language understandable to the general public.

3. The notice must be given in your native language or other mode of communication. If the native language or other mode of communication that you use is not a written language, the school system shall take steps to ensure that:
   - the notice is translated orally or by other means in your native language or other mode of communication;
   - you understand the content of the notice; and
   - there is a written record that the requirements have been met.

Evaluation Procedures 300.320, 300.532

After a child has been referred, an evaluation process must be followed to determine his/her need for special education services. **Evaluation** means *procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.* The following specific procedures protect the rights of students and their parents:

1. Parents must be involved in the referral process for initial testing.

2. Parents must be given **prior written notice** of their rights in the language they best understand. Parents must give written permission before the first individual evaluations can begin.

3. Testing and evaluation materials must be selected and administered in a way that is not racially or culturally biased. The materials must not discriminate against the child.

4. Before a child can be placed in a special education program, all the necessary screenings, interventions, and individualized evaluations must be done.

5. The school system must meet the following requirements in its evaluation procedures.
   The tests must be:
   - given in the child's native language or other way of communication;
   - validated for the purpose for which they are used. (For example, achievement tests may not be used to measure intellectual ability); and
   - administered by trained and knowledgeable personnel according to the instructions provided by the test's producer.

6. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the report. (For example, if the person administering the test is not qualified or the method of test administration was different from the guidelines, those differences must be explained.)

7. The selected test and other evaluation materials must include those designed to measure specific areas of educational need and not those designed to provide a single intelligence score. (The tests must look at the area in which the child seems to have needs.).

8. A test must allow for impaired vision, hearing, speaking, or manual skills so these impairments do not lower test scores.

9. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

10. Your child must be evaluated in all areas related to the suspected disability or special need as required in Procedures Governing Programs and Services for Children with Disabilities, which is approved by the State Board of Education.

11. More than one test or procedure must be used to determine whether a child has a disability and to develop an appropriate educational program for the child.

12. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and in developing the content of the individualized education program. This shall include information that will enable the child to be involved in, as well as progress, in the general curriculum. The information shall allow preschool children to participate in activities appropriate to their age.

IN OTHER WORDS. . .

You must give your written permission before the school system can evaluate your child. Evaluations to decide whether a child has a disability that requires special education and related services must consist of more than one test, and those tests must be given in the language that the child normally uses. This includes hearing-impaired children who communicate with cued speech or signing, as well as visually impaired children who may use braille, and children who speak or understand a language other than English. Tests must be given by people who have been trained in the use of the tests. You can provide the school with information about your child that you want them to use in deciding if your child has a disability that requires special education and related services.

Independent Educational Evaluation 300.502

If parents disagree with the evaluation provided by the public school, they have the right to an independent educational evaluation. An **independent educational evaluation** means an evaluation conducted by a qualified examiner(s) who is not employed by your school system. It is provided at no cost to you. It is at public expense. You have the following rights concerning obtaining an independent educational evaluation:

1. You have the right to be given, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the school system's criteria for that evaluation.

2. You must be told about the requirements for selecting a qualified examiner. The requirements for an independent educational evaluation must be the same as those used by the school. The local director for exceptional children programs can provide the requirements.

3. When the school system disagrees with the need for an independent evaluation and refuses to provide it, they must ask for a due process hearing to show that its evaluation is appropriate. If an administrative law judge decides that the school system's evaluation is appropriate, the school system will not have to pay for it.

4. The school system must consider any independent evaluation, including one you pay for, when making decisions regarding your child's special education program. The evaluations may be used as evidence at a hearing regarding your child.

5. If you request an independent educational evaluation, the school may ask for the reason you object to the school's evaluation; however, you are not required to give a reason. The school may not unreasonably delay providing the independent educational evaluation at public expense or initiating a due process hearing to defend their evaluation.

6. If, as part of a due process hearing, an administrative law judge requests an independent evaluation, it must be at public expense.

7. If you pay for an evaluation for your child, you should not expect the school to pay for it unless you have received written approval for payment from the appropriate person in the school system.

IN OTHER WORDS. . .

Before receiving special education services, your child must receive an evaluation to determine if a disability exists. If you disagree with the school's evaluation results, you can request an independent educational evaluation. This testing is provided at the school system's expense and is done by someone other than school staff. The school must consider the results of an independent educational evaluation, but they do not have to be accepted or used.

Eligibility Determination 300.534

After the evaluation process is completed, a decision must be made to determine if the child needs special education and related services. This decision must be made by a group of persons including the parent, who are knowledgeable about the child, the meaning of the evaluation data, and the placement options (choices). The school must provide a copy of the evaluation report and the documentation of eligibility determination to you.

- A student must have a disability according to one of the eligibility categories;
- The disability must adversely affect the student's educational performance; and
- The student must be in need of special education.

The school must conduct a reevaluation for a child with a disability before determining that the child is exited from special education, unless the child is exiting because of graduation with a regular high school diploma or because the child reaches 21 years of age.

Individualized Education Program (IEP) 300.344 - 300.347

If a decision is made that a child with a disability needs special education and related services, then an individualized education program (IEP) must be developed within thirty (30) days of that determination. An IEP is a written plan for the special education and/or related services that will be provided to a particular child. An IEP must be developed before special education and related services are provided to a child, and the services must start as soon as possible following the meeting(s) in which it was developed. The school is required to hold meetings at least once a year, or more often if necessary, to review each child's IEP and to revise the IEP when needed.

1. The school system shall ensure that the IEP team for each child with a disability includes:
- one or both parents;
- at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- at least one special education teacher of the child, or if appropriate, at least one special education provider of the child;
- someone from the school system, who is qualified to provide or supervise special education, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of

resources; (This person may be another member of the IEP team providing all the qualifications are met.)
- the child, when the meeting is to discuss transition services, and at other times where appropriate;
- a representative of any other agency that is likely to be responsible for providing or paying for transition services;
- an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above;
- at the discretion of the parent or the school system, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- if appropriate, the child.

2. If your child is being considered for special education for the first time, the school must have the following present at the meeting:
   - a member of the evaluation team, or
   - someone from the school system, your child's teacher, or some other person who is knowledgeable about the evaluation procedures used with your child and who knows about the results of the evaluation.

3. The school must notify you of the IEP meeting early enough to ensure that you will have an opportunity to attend, and the school must schedule the meeting at a time and place when you and school staff can meet.

4. The notice must state the purpose, time and location of the meeting and who will be attending for the school system.

5. If you do not come to a scheduled IEP meeting, the meeting may be held, as long as the school has a record of its efforts to involve you. If you have agreed to attend the meeting and then cancel on the day of the meeting, the school may conduct the meeting without you.

6. As a participant at the IEP meeting, you should provide information and ideas to be used in writing the IEP.

7. The school must ensure that parents understand what happens at the IEP meeting. For instance, if the parents do not speak English, an interpreter will be provided by the school system.

8. The school must give you a copy of the IEP.

Individualized Education Programs (IEPs) must include:

1. A statement of your child's present level of educational performance which will tell how the disability affects your child's involvement in the general curriculum; or, for preschool children, how the disability affects the child's participation in appropriate activities;

2. A statement of goals for the year, including short term instructional objectives or benchmarks; these statements must show how they are related to:
   - meeting your child's needs in the general curriculum; and
   - meeting your child's other educational needs resulting from the child's disability.

3. A statement of the special education, including related services and supplementary aids and services, and a statement of the program modifications or supports for school personnel that will be provided in order for the child:
   - to advance appropriately toward attaining the annual goals;
   - to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
   - to be educated and participate with other children with disabilities and nondisabled children in the general curriculum, nonacademic activities, and extracurricular activities.

4. An explanation of the extent to which a child will not participate with nondisabled children in the regular classroom and /or nonacademic or extracurricular activities;
   - a statement of modifications for the statewide testing programs:
   - a statement why participation in statewide testing is not appropriate if that is the case; and
   - how the child will be assessed.

5. The date services are expected to begin and end, frequency, duration, and location where they will be delivered;

6. Transition components that include:
   - at age 14, a statement of your child's transition service needs that focus on the child's course of study (such as participation in vocational courses or advanced placement courses);
   - at age 16 (or younger when necessary), a statement of needed transition services for the child including, when necessary, a

statement of other agency responsibilities (such as vocational rehabilitation or mental health) that may be needed;

7. A statement of how your child's progress toward the annual goals will be measured, what that progress is, and how you will be informed of that progress. You must be notified at least as often as parents of nondisabled students are notified of their progress.

Written Education Program for the Pregnant (WEP)

A written education program is to be developed for each pregnant school girl who is in need of special educational services. Pregnant students with special educational needs are those who, because of their pregnancy, require special education and/or related services other than that which can be provided through regular educational services. When a student is pregnant and it appears that her educational needs cannot be met in a regular class, she should be referred to the IEP Team. You must be contacted after the referral is made to give consent for any additional evaluations that might be needed and to be involved in deciding the services to be provided to the student.

Related Services 300.24

Related services is defined in Procedures Governing Programs and Services for Children with Disabilities as follows: transportation and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education. They include speech-language pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; medical and counseling services, including rehabilitation counseling; school health services; orientation and mobility services; and parent counseling and training. This includes the early identification and assessment of disabling conditions in children. Medical services shall be for diagnostic and evaluation purposes only.

To be eligible to receive related services, a child must:

- have one or more of the disabilities listed in the definition from the Procedures Governing Programs and Services for Children with Disabilities;
- require special education (Not all children who have a disability require special education; many can and should attend school without any program modification.); and
- require the related service in order to benefit from the special education instruction.

Placement 300.552

Placement in a special education program occurs *after* the referral, identification, evaluation and the development of the IEP. The decision that a child requires special education and/or related services must be made by the IEP team. Parents of each child with a disability are members of any group making placement decisions. **A placement decision cannot be made by one person.**

The school system must ensure that:

1. Placement is based on the child's IEP;

2. Placement is made within ninety (90) calendar days of the date that the school receives the written referral;

3. Placement and the IEP are reviewed and determined at least annually;

4. Placement is as close as possible to the child's home or the school in which the child would be educated if he/she were not disabled, unless the IEP requires some other arrangement;

5. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

6. A child is not removed from education in age-appropriate regular classrooms because of needed modifications in the general curriculum.

Reevaluation 300.533

The school shall conduct a reevaluation of a child with a disability if conditions warrant or if you or the child's teacher requests reevaluation, but at least once every 3 years.

Your informed consent should be secured prior to individualized testing; however, consent is not necessary if the school can demonstrate that reasonable measures were taken to obtain consent and a parent failed to respond.

If the individualized education program team (IEP team) determines that no additional data are needed to determine whether the child continues to be a child with a disability and requires special education services, the school:

- shall notify the parents of that decision and their rights as parents to request an assessment to determine whether the child continues to be a child with a disability; and
- shall not be required to conduct such an assessment unless requested by the parent.

Discipline Procedures 300.519 - 300.524

Short Term Removals The school is not required to provide educational services for the first 10 days of suspensions during the school year unless such services are provided to children without disabilities. For suspensions/ removals of more than 10 cumulative days, follow the procedures under "Long Term Removals".

Long Term Removals The school system may remove a child for more than 10 cumulative days in a school year as long as the removal does not create a pattern of exclusion that constitutes a change in placement. Any disciplinary suspension for longer than 10 consecutive days shall be considered a change in placement. When determining whether a series of short-term removals constitute a change in placement, the following factors must be considered:

- the length of each suspension,
- the total amount of time the child has been removed, and
- the proximity (nearness) of the removals to one another.

Whenever a child is removed for more than 10 days in a school year, the school system must provide the child with services to the extent necessary to enable him or her to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in his/her IEP. If the removal is longer than ten days but the removal does not constitute a change in placement, school personnel in conjunction with the child's special education teacher determine the extent to which services are necessary to enable the child to progress appropriately in the general curriculum and accomplish the goals in the IEP. If the proposed removal constitutes a change in placement, the IEP team determines the extent to which services are necessary to progress appropriately in the general curriculum and accomplish the goals in the IEP.

Functional Behavioral Assessment If your child is removed from school for disciplinary reasons for more than 10 school days in a school year or a removal that constitutes a change in placement, the school must conduct a functional behavioral assessment and develop an individualized behavioral intervention

plan based on the assessment findings. A **functional behavioral assessment** examines the circumstances surrounding the occurrence of problem behaviors, and tries to identify situations and events that may be contributing to or causing the behavior. The IEP team, with your input and participation, develops the behavioral intervention plans.

If a behavioral intervention plan has already been developed and disciplinary removal is being considered that would result in your child being removed for more than 10 cumulative days in the current school year, the IEP team should meet and review the plan and its implementation to ensure that the plan addresses the behavior that caused your child to be removed. If one of the IEP team members believes that modifications in the behavioral intervention plan are necessary to address the behavior causing the disciplinary removal, the IEP team shall meet to make the necessary revisions.

Manifestation Determination If your child has been removed for more than 10 school days and the suspensions constitute a change in placement, the school system must notify you of this decision, provide you with a copy of the Handbook of Parents' Rights, and convene an IEP meeting within 10 business days of the removal. The IEP team will:

- review, in terms of the behavior causing the disciplinary action, all relevant information;
- determine the relationship between your child's disability and the misconduct;
- determine, in relationship to the behavior subject to disciplinary action, if your child's IEP and services were appropriately implemented;
- determine whether your child's disability impaired the ability of the child to understand the impact and consequences of the behavior and the ability to control the behavior subject to disciplinary action; and
- plan for a functional behavioral assessment and develop a behavioral intervention plan for your child to address the behavior which resulted in the removal, or review and modify, as necessary, an existing behavioral intervention plan.

If the IEP team determines that your child's behavior was not related to the disability or an inappropriate placement, then your child may be subjected to the same disciplinary procedures applied to students without disabilities, and served in a different setting in the same manner as nondisabled children. IDEA requires continued educational services during such removals. If the IEP team determines that your child's behavior was related to his or her disability, then your child may not be moved to a different setting unless the IEP team has determined that it is the most appropriate placement. If you disagree with the

determination of whether the behavior is related to your child's disability or the proposed placement change, you have the right to request an expedited due process hearing. (See page 26.)

Interim Alternative Education Settings (IAES) 300.520

Sometimes the behavior(s) of a child with a disability allows school officials to move him/her to an interim alternative education setting, another setting, or suspension for up to 10 consecutive school days during the school year. Under very specific circumstances, a child with a disability may be removed to an interim alternative education setting for up to forty-five (45) days. Those circumstances occur when:

- a child without a disability would be subject to the same disciplinary procedure;
- a child carries a weapon to school or to a school function; or
- knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

An interim alternative education setting is determined by the IEP team, which includes the parent(s), and it must enable the child to continue participation in the general curriculum (although in another setting) and to continue to receive those services and modifications (including those described in the child's IEP) that will enable the child to meet the goals and objectives in the IEP. It should also include services and modifications designed to address the behavior that led to the child's removal to the alternative educational placement so that it does not recur. A child with a disability should not receive discipline more severe than a non-disabled child would receive for a similar offense.

IN OTHER WORDS. . .

Your child can be moved to an interim alternative education setting, another setting, or suspended for up to ten (10) consecutive school days during the school year. Placement for up to forty-five (45) days can occur for drugs or weapons violations or for dangerous behavior. The interim alternative education setting is decided on by the IEP team, which includes you. The setting must enable your child to continue participation in the general curriculum and to continue to receive services and modifications that will allow him/her to meet the goals and objectives in his/her IEP. It should also include services and modifications designed to address the behavior that led to your child's placement in an alternative educational placement.

Removal for Danger to Self or Others The school system may request an order from an Administrative Law Judge (ALJ) to change your child's educational placement to an IAES for up to 45 days, if there is a danger to your child or others are likely to be injured if your child stays in the current placement. The IEP team will decide the interim alternative educational setting.

Placement During Mediation or a Due Process Hearing for Disciplinary Action

If you initiate mediation or a due process hearing for a **removal of more than 10 cumulative school days**, the removal may be carried out while the disagreement is being resolved as long as the removal does not constitute a change in placement.

If you initiate mediation or a due process hearing for a **proposed disciplinary removal that constitutes a change in placement**, your child will remain in his or her current educational placement until a final decision has been reached or you and the school agree upon another placement.

If your child's behavior is not a manifestation, he/she is subject to the same disciplinary procedures as nondisabled students, except that the school must provide an education. At the end of the 45 days, the school is not obligated to return him/her to the same classroom. In cases where your child has been **placed in an interim alternative education setting for weapons, drugs or due to dangerousness**, your child may remain in the interim alternative education setting for a period not to exceed 45 days. Thereafter, your child will return to the previously agreed upon educational placement unless either an ALJ orders another placement or you and the school system agree to another placement.

If your child's behavior is a manifestation, he/she cannot be removed if it constitutes a change in placement.

Children Not Yet Determined to Be Disabled 300.527

A child who has not yet been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the education agency may assert any of the protections described in this section if the school had knowledge that the child was a child with a disability before the behavior that led to disciplinary action occurred.

The school will be considered to have knowledge that a child is a child with a disability if:

- the parent has expressed concern in writing to personnel of the school that the child is in need of special education and related services;
- the behavior or performance of the child demonstrates the need for such services;
- the parent has requested an evaluation of the child to determine eligibility for special education and related services; or
- the child's teacher or other school personnel have expressed concern about the child's behavior or performance to the director of special education or other school personnel.

If you request an evaluation during the time period in which the child is subjected to disciplinary measures, it shall be conducted in an expedited (performed quickly) manner. The child will remain in the educational placement determined by school authorities until the evaluation process is completed, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school and information provided by the parents, the school shall provide special education and related services in accordance with the provisions of the IDEA.

> IN OTHER WORDS . . .
>
> A child who has not been determined eligible for special education and related services and who has violated any rule or code of conduct of the education agency may have protections under IDEA if the school had knowledge that the child was a child with special needs before the behavior that led to the disciplinary action occurred.

Private School Placement 300.451

When the state or local school system places children with disabilities in private schools and facilities, they are provided special education and related services, in accordance with an individualized education program (IEP) at no cost to the parents.

Reimbursement for Private School 300.403

The public school is not required to pay for the cost of the education,

including special education and related services, for your child with a disability at a private school or facility if the school has made a free appropriate public education available to your child and you elect to place him/her in a private school or facility.

Disagreements between you and the school system regarding the availability of an appropriate program for your child and the question of who is financially responsible for providing it may be settled in a due process hearing. If you wish to ask an Administrative Law Judge to require the school system to fully reimburse you for the cost of placing your child in a private school or facility, you must have informed the school system that you were rejecting its proposed placement and stated your concerns and intent to enroll your child in a private school at public expense. You may do this by telling the IEP team of your decision at the most recent IEP meeting you attended prior to removing the child from the public school or by giving the school system written notice at least **10 business days** prior to the removal of your child from the public school.

An Administrative Law Judge may require the school to reimburse you for the costs of the private school if you failed to comply with the notice requirements because:

- you were unable to read and write, or cannot write in English;
- complying with these requirements would have resulted in physical or serious emotional harm to your child;
- the school system prevented you from providing notice; or
- the school system failed to inform you of your obligation to notify them.

If you are seeking reimbursement, you must also make your child available for an evaluation if prior to your removal of your child from the public school, the school notified you of its intent to evaluate your child.

Services for Parentally Placed Students in Private Schools 300.455

Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. A private school child with a disability is **not entitled** to any service or to any amount of a service the child would receive if enrolled in a public school. Parents may file formal written complaints according to state complaint procedures regarding the provision of services , but they are not entitled to due process hearings. Disputes related to identification, evaluation, and eligibility are subject to due process procedures.

IN OTHER WORDS. . .

If you decide to place your child in a private school and request that the school system pay for it, you must have told school officials at the last IEP meeting you attended that you were going to enroll your child in a private school, and explain your concerns about the public school program. If you have not attended an IEP meeting recently, your intention of enrolling your child in a private school and requesting that the school system pay for it, must be submitted in writing to the school system within 10 business days of the withdrawal of your child from school. Your letter must tell school officials that you are withdrawing your child and why. If the school refuses to pay for the private school, it will be necessary for you to request a due process hearing so that a judge will make the decision of whether the public school is responsible for paying.

Opportunity to Examine Records 300.501, 300.562 - 300.569

You must be given an opportunity to inspect and review all your child's education records.

1. If you ask to inspect your child's records, the school must respond without unnecessary delay and in no case more than 45 days, after the request has been made. A quick response is required when records are needed before an IEP meeting or due process hearing relating to the child's identification, evaluation, or placement, or to the provision of a free appropriate public education for the child.

   - The school must respond to a reasonable request for explanation and interpretation of the records, and must provide upon request, a list of the types and locations of records maintained.

   - The school may charge a fee for copies of records made for parents but must provide copies of the records at no cost if you are unable to review them at the school. The school may not charge a fee for searching through the records.

   - You have the following rights:
     - to have your representative inspect and review the records;
     - to restrict (not allow) access to your child's records by

withholding consent to disclose records, except in certain circumstances;

- to inspect your child's records, unless the school has been informed that a parent has no authority under state laws relating to such matters as guardianship, separation, and divorce;
- to inspect the log of individuals who have reviewed your child's records. That information should include the name, date and purpose for which persons other than the parents and authorized school system employees have obtained access to your child's record;
- to review only the information relating to your child, if any education record contains information on more than one child;
- to be informed before information in your child's file is to be destroyed;
- to request that records pertaining to the identification, placement and special educational programming of your child with disabilities be destroyed when the records are no longer needed to provide special education services to the child. You may request a copy of the records before they are destroyed. Such records might sometimes be needed to document eligibility for social security benefits or other purposes; and
- to request that the school amend the record if you believe that information in the record is inaccurate, misleading or violates your child's privacy or other rights. If the school system decides not to amend the record, it must inform you of the refusal within a reasonable time after the initial request. The school must advise you of your right to a due process hearing before a neutral person.

2. If, as a result of the hearing, the school system decides that information contained in the child's record is inaccurate, misleading, or in some way violates privacy or other rights of the child, the school system shall amend the record and inform you of the changes in writing.

3. If, as a result of the hearing, the school system's refusal to amend the record is upheld, then you must be informed of your right to place a statement in the records commenting on the information or explaining your disagreement with the school system.

4. Any explanation placed in the child's record must:
   - be kept by the school as part of the child's record as long as the record or the portion of disagreement is maintained by the school system; and

- if your child's record or the portion of disagreement is disclosed to anyone by the school, the explanation must also be disclosed.

IN OTHER WORDS. . .

You have the right to see or request copies of all your child's school records. If you disagree with items in the records, you can ask for those items to be changed or removed. The school will either agree or disagree with your request. You can ask for a due process hearing if you disagree with the school's decision, and the judge will make the decision.

Resolving Disagreements

There may be a time when you and the school staff disagree. Many disagreements can be resolved by communicating with your child's teacher, school principal, or other school system personnel. There are also procedures established under state and federal law to address your concerns.

Mediation 300.506

If parents and the school cannot agree on the identification, evaluation, or educational placement or the provision of a free appropriate public education for a child with a disability, then a trained, impartial, third party can be requested to mediate (talk to both sides about the disagreement). Mediation is a process offered through the school in an attempt to resolve the problem(s) prior to filing for a due process hearing. **During mediation, you have input into the final decision.** The following are required of the mediation process:

- it is voluntary on the part of the parties;
- it is not used to deny or delay your right to a due process hearing or any other rights you are afforded;
- it is conducted by a qualified, impartial, and independent mediator who is trained in effective mediation techniques; and
- there are no costs to the parent;

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. You may be asked to sign a confidentiality pledge at the end of the process.

Informal resolution of disputes or disagreements, such as mediation, regarding the identification, evaluation, or educational placement or the

provision of a free appropriate public education of a child with disabilities is encouraged before filing a request for a due process hearing. You may request mediation by notifying the superintendent of your local public school system in writing.

IN OTHER WORDS. . .

If you disagree with the appropriateness of your child's special education testing, services or educational placement, it is important to try all ways to resolve your disagreements before filing a petition for a due process hearing. One option is **mediation**, which is a service offered at no expense to you. A mediator is a neutral person who tries to resolve differences between you and the school by reaching a compromise. Mediation can be requested by notifying the superintendent of the local public school system in writing. **During mediation, you participate in reaching the final settlement.**

Formal Written Complaints 300.660-662

Complaint investigation is a procedure to assure that the school is complying with federal and state laws and regulations regarding special education. Anyone may file a formal complaint with the Exceptional Children Division by mailing a signed letter:

Director, Exceptional Children Division
Department of Public Instruction
301 N. Wilmington Street
Raleigh, North Carolina 27601-2825.

The letter must state:

- the name of the student involved, if it involves a particular student;
- the specific violation of special education law that you believe has occurred;
- the facts on which the statement is based;
- when and where the alleged violation occurred; and
- how you would like to see the complaint resolved.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than 3 years prior to the date the complaint is received.

Staff from the Exceptional Children Division will conduct an investigation into the allegation(s). You will receive a written report of findings, conclusions, and resolutions within 60 calendar days of receipt of the request, unless an extension is granted for extenuating circumstances. The decision of the Department of Public Instruction is final. For additional assistance concerning the filing of a complaint, you may contact the Division at (919)715-1587.

IN OTHER WORDS. . .

A formal complaint is a chance for you to tell the Exceptional Children Division at the state level about your allegations against the school system for violations of the law related to your child's identification, evaluation, special education and related services. Before filing a complaint, you should have talked with your child's teacher, principal and the local Director of Exceptional Children Programs.

Due Process Hearing 300.507-.511

If at any time, you cannot come to an agreement with the school system regarding your child's education, the school system or you have the right to ask for an impartial due process hearing. A hearing may be held on any matter relating to the identification, evaluation, placement, or the provision of a free appropriate public education to your child. A due process hearing places the responsibility for resolving the conflict on an Administrative Law Judge (ALJ) in the Office of Administrative Hearings (OAH), an agency that has no relationship with the local school system or with the State Department of Public Instruction. The hearing is conducted in a court room, much like any legal case. The school system will have an attorney representing them.

How To File For a Due Process Hearing

You must file a petition within sixty (60) days of written notice of the contested action with the Office of Administrative Hearings. That means that you have 60 days from the date of an IEP or other written documents with which you disagree to file for a hearing.

For additional information concerning the filing of a petition or requesting an expedited due process hearing, you should contact the Office of Administrative Hearings at 919/733-2698. The OAH will send a packet to you with the necessary information and forms for filing the petition. Once the OAH receives your petition, they will mail a notice of the hearing date. You or your attorney must provide notice (which shall remain confidential) of the following:

- the name and home address of the child, and the name of the school the child is attending;
- a description of the problem of the child as it relates to the proposed initiation or change, including facts relating to the problem; and
- a proposed resolution of the problem to the extent known and available to the parents at the time.

You should send a letter requesting a due process hearing to the:

Office of Administrative Hearings
424 N. Blount Street, P.O. Drawer 27447
Raleigh, NC 27611-7447

After the Petition is Filed

Upon receiving your petition request, the OAH will mail you a notice of the date and location of your scheduled hearing, and the name of the judge assigned to your case. A settlement hearing, which is mediation conducted by an Administrative Law Judge and is voluntary on the part of the parties, will be made available when a due process hearing is requested. The due process hearing must be completed, and a copy of the decision mailed to you and the school system within 45 days of the request for the due process hearing, unless specific extensions have been granted by the ALJ. It is possible for extensions to prolong a hearing for a period of weeks or months.

Your Child's Status While the Case is Being Decided 300.514

No change may be made to your child's classification, program or placement during the pendency of any administrative or judicial proceeding unless you and the school agree, or emergency relief is granted. If the due process hearing involves initial admission to public school, your child must be placed in an interim public school program agreed upon by you and the school system until the proceedings are completed.

Due Process Rights for Both Parties

- The parent has the right to be advised and accompanied at the due process hearing by an attorney and by individuals with special knowledge or training regarding children with disabilities.
- Either party may present evidence, require the attendance of witnesses, and cross-examine witnesses.
- Either party may ask the ALJ to stop the introduction of any evidence, including any evaluations or recommendations based upon those evaluations, that has not been exchanged at least five business days before the hearing.
- Either party may get a written verbatim record of the hearing. Your copy will be provided at no cost to you.

You have the right to:

- Ask for and receive, from your school system, a list of any free or low-cost legal and other advocacy services available. You may call the Governor's Advocacy Council for Persons with Disabilities toll-free at 1-800-821-6922 for information;
- See a list of all the ALJs and their qualifications, which is available from your school system or the OAH;
- Have the hearing open to the public;
- Have your child present at the hearing; and
- Have an interpreter present, if needed, at no cost to you.
- Have the hearings and reviews scheduled at a time and place which is convenient to you and the child involved.
- Request an expedited due process hearing (held without delay) if you disagree with decisions about the manifestation determination or the appropriateness of placement following manifestation determination.

Copies of due process decisions are provided to the State Council on Educational Services for Exceptional Children after personally identifiable information has been removed, and they are available to the public unless the judge has sealed the record.

Appeals

A decision made in a hearing is final unless the parent or school system appeals the decision. You have the right, within 30 days after receiving the written decision, to appeal the decision of the hearing officer to the Superintendent of Public Schools of North Carolina, Department of Public

Instruction, 301 N. Wilmington Street, Raleigh, North Carolina 27601-2825. The superintendent will appoint an impartial review officer to review the decision or conduct another hearing. The review officer is required to give his/her decision within 30 days of the date the superintendent received the request for the appeal, unless an extension has been granted. A decision from the review officer may be appealed to the federal district court or in State court through a civil action.

Attorneys' Fees 300.513

Parents may be reimbursed for reasonable attorney's fees and other costs, as awarded and determined by a court, if the court decides in your favor in a due process hearing or court action. The court may reduce attorneys' fees if:

- the parents unreasonably prolonged the time it took to resolve the dispute;
- the attorneys' hourly rate or time spent in the proceedings was excessive; or
- you or your attorneys failed to provide the child's name, address, school, a description of the problem, and proposed resolution notice in the due process petition.

Attorneys' fees may not be awarded for participation in IEP team meetings, unless the meeting has been ordered by a judge. Attorneys' fees may not be reduced if the State or school unreasonably delayed resolution of the dispute or violated its obligation to provide procedural safeguards.

Placements During Due Process 300.514

Except as described in #1 below, a child involved in a due process hearing must remain in his/her current educational placement unless the school and parents agree otherwise.

1. When a parent requests a due process hearing to challenge a disciplinary action that has resulted in placing the child in an interim alternative education setting (IAES) for up to 45 days, the child shall remain in the IAES for that period or until the action is settled, whichever comes first, unless you and the school agree otherwise.

2. If you disagree with a proposed change in placement following the expiration of the interim educational placement, the child must be returned to his/her placement prior to the interim alternative educational placement until the action is settled.

3. In the case of a child whose behavior poses a danger to himself/herself or to others, the school system may request an expedited hearing to return the child to an interim alternative educational placement until your due process proceedings are concluded.

4. If a complaint concerns initial admission to public school, with the parents' consent, the child must be placed in the public school program until all complaint proceedings are completed.

IN OTHER WORDS. . .

The hearing process allows you to disagree with the school system about the identification, evaluation, and placement of your child and the services which are being provided for your child by the school system. You have 60 days after you disagree with the action of the school concerning one of the above to ask the Office of Administrative Hearings to hold a hearing so both you and the school system can explain each side of the story. You can have an attorney or an advocate with you in the hearing. The hearing will be conducted in a court room. If either you or the school system disagrees with the hearing officer's decision, you can ask the Department of Public Instruction (DPI) to provide another person who is not associated with the school system or DPI to review the decision. If the review officer's decision is not satisfactory to you or the school system, either of you can go to court.

Surrogate Parents 300.515

Under federal and state laws, the school has the responsibility to appoint a surrogate parent for a child with a disability for the following reasons:

- when no parent can be identified;
- when the school, after making reasonable efforts, cannot find or locate the parents; or
- when the child with a disability is a ward of the state.

The school shall ensure that the surrogate is not an employee of the state or local education agency, or any other agency that is involved in the education or care of the child; has no interest that conflicts with the interest of the child; and that he/she has knowledge and skills to adequately represent the child.

IN OTHER WORDS.....

A surrogate parent represents the interests of the child with a disability in all matters relating to his/her identification, evaluation, educational placement, and the provision of a free appropriate public education. Surrogate parents have the same rights of parents as described in this Handbook on Parents' Rights.

Transfer of Parental Rights for Students 18 Years Old 300.517

When your child reaches 18, all rights under special education law will transfer to your child unless a court has appointed a legal guardian for your child. Except for students incarcerated in correctional institutions, both your adult student and you will receive all the required notices contained within these parental rights. At least one year before your child turns age 18, the school system must inform both you and your child of the transfer of these rights.

Resources for Parents

The organizations listed below are available to assist North Carolina's parents of children with disabilities.

Exceptional Children's Assistance Center 800-962-6817 or 704-892-1321 www.ecac-parentcenter.org This is a training and information center that provides free information and assistance with educational issues to parents of children with disabilities. They offer a lending library, newsletter, and a Parent Info Line answered by parents.

Family Support Network of North Carolina 800-852-0042 www.med.unc.edu.commedu/familysu They have a free statewide information and referral service, parent-to-parent programs, and workshops for parents of children with disabilities. Call them for specific disability information and for listings for all the different disability support groups.

Governors Advocacy Council for Persons with Disabilities 800-821-6922 or 919-733-9250 www.doa.state.nc.us/doa/gacpd/gacpd.htm Provides free advocacy services to any citizen of North Carolina who has a disability.

Carolina Legal Assistance 919-856-2195 Offers legal representation to children and adults with mental illness and developmental disabilities. Fees are based on a sliding scale.